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THE SPY WAR

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In a dispute over whether the K.G.B. had penetrated the C.I.A., counterintelligence chief James Angleton (left) was fired by Director William Colby in 1974.

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24 September 1980

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SPOOKS AND THE SINGLE SMILE



The Delightfully
Right jumped
with joy the
other night,
darlings. They'd
all sidled in to
hear Michael
Novak speak on

"Solzhenitsyn at Harvard," at
Ernie Lefever's Ethics and
Public Policy Center dinner. (E
& PP, as we must now call it, is
the hot Nouveau Right Think-
Tank. It has declared war on the
Institute for Policy Studies, hive-
and haven of the Nostalgic Left.)
Of course Solzhenitsyn, who
can't bear *anybody*, didn't come.
But there, engulfing the spinach
soup, perched the entire Old
Intelligence Establishment: Ray
Wannall, once FBI counter-
intelligence; Two old CIA
Shoguns, Dick Helms and Bill
Colby; and James Jesus Angleton
(James Jesus, of course, was the
model for "Mother" in Aaron
Latham's "Orchids for Mother.")
They all hooted with glee at the
Evening's Joke, as fluted by
Michael Novak: "*Some* say that
Solzhenitsyn is a prophet. But
this is a non-prophet
organization." Heh heh. Apart
from that, Earwigs, everybody
behaved *quite* normally. Watch
that Think-Tank.

Conspiracy Trial Emphasizes Problem of Protecting Government Secrets

By STUART TAYLOR Jr.

Special to The New York Times

WASHINGTON, Sept. 18 — The trial of two former officials of the Federal Bureau of Investigation on charges of authorizing illegal break-ins will be a major test of the Government's ability to prosecute alleged crimes involving intelligence and national security activities without jeopardizing vital secrets.

The Government has abandoned or settled a number of major cases involving intelligence operations, including the perjury prosecution of a former Director of Central Intelligence, Richard Helms, because of concern that the defendants would expose classified information they asserted to be relevant to their defenses. The conflict in such cases between the need of the Government to protect classified information and the right of the defendants to obtain and use all relevant evidence has come to be known as the "graymail" problem.

This problem is present in its most acute form in the trial of W. Mark Felt,

former acting associate director of the bureau, and Edward S. Miller, former chief of the intelligence division, which opened here this week.

"Graymail" in its narrowest sense refers to the tactics of defendants who use the threat of exposing national security secrets extraneous to the charges at issue so as to force the Government to drop charges or settle them on terms advantageous to the defendants. Justice Department officials also use the term more broadly. Philip B. Heymann, head of the Department's criminal division, has said in Congressional testimony, "Wholly proper defense attempts to obtain or disclose classified information may present the Government with the same 'disclose or dismiss' dilemma."

Mr. Heymann was testifying in support of proposed legislation to provide for secret pretrial judicial screening of classified information that the defense seeks to use as evidence, as well as pretrial evidentiary rulings on disputed points and expedited appeals of such rulings.

The Justice Department began pushing for such legislation after it was forced to drop perjury charges in February 1979 against a former executive of the International Telephone and Telegraph Corporation, Robert Berrellez, to avoid the disclosure of information about American intelligence activity in Latin America. The dismissal came after Federal District Judge Aubrey Robinson Jr. refused a prosecution request for an unusual form of protective order that would have required the defense to disclose in advance what secret information it planned to introduce and would have called for rulings by the judge in a closed session on the admissibility of such evidence.

The trial of Mr. Felt and Mr. Miller appears to present even more difficult problems regarding national security secrets than those that led to the dismissal of the Berrellez case. The case floats on a "virtual sea of classified information," according to court papers filed by Brian P. Gettings, one of Mr. Felt's attorneys, and much of this classified information is clearly relevant to the issues upon which the defendants rely to justify their actions.

Mr. Felt and Mr. Miller have publicly acknowledged approving warrantless surreptitious entries into the homes of friends and relatives of fugitive members of the radical Weather Underground in 1972 and 1973. In the trial, they will seek to establish that they acted lawfully by proving that they had reason to believe the break-ins were authorized by higher officials, including President Nixon and L. Patrick Gray 3d, who was Acting Director of the F.B.I., in accordance with long-standing bureau practices. They will also seek to prove that they had reason to believe the break-ins were justified by connections between the Weather Underground and hostile foreign governments.

Mr. Gray, who was indicted along with Mr. Felt and Mr. Miller in April 1978, has denied any knowledge of the break-ins. Prosecutors have indicated that Mr. Gray may never be put on trial because of the danger that national secrets would be exposed and because of new evidence that renders the case against him "substantially weaker" than it was thought to be when he was indicted.

Access to Documents Sought

Defense attorneys for Mr. Felt and Mr. Miller have argued with prosecutors for months, amid repeated postponements of the trial date, concerning their efforts to obtain access to and the right to use in evidence thousands of classified documents and the testimony of numerous witnesses. Judge William B. Bryant has been a referee in this process, allowing the defense counsel rather broad access to classified materials for purposes of "discovery," while establishing an elaborate set of procedures for screening out sensitive information from documents to be publicly placed in evidence at the trial.

In order to protect against the possibility of an unwarranted revealing of sensitive information at the trial, Judge Bryant has ordered defense lawyers and witnesses not to disclose any item falling within certain listed categories without first obtaining court approval. The unusual procedure is designed to give the Government an opportunity to object to any disclosures of particularly sensitive information before they have slipped out. Judge Bryant will hear arguments and rule on such objections either in whispered sessions at the bench or in closed session.

Defense lawyers have objected to some of the procedures established by Judge Bryant as unfairly limiting their right to put relevant information before the jury. The rulings are certain to be challenged on appeal, if either defendant is convicted.

The possibility remains that the prosecutors could be forced to drop the case if the judge rules for the admission of particularly sensitive secrets. The prosecutors may be expected to make strenuous efforts to avoid such a result. Mr. Heymann has testified that failure to pursue such cases "promotes concern that there is no effective check against improper conduct by members of our intelligence agencies."

Investigators in FBI Case Checked CIA Also, Break-In Trial Jury Told

By Kenneth R. Walker
Washington Star Staff Writer

The federal investigation that led to the indictment of two former FBI officials for approving illegal burglaries also looked into surreptitious entries allegedly approved by former CIA Director Richard Helms, it was disclosed in federal court here yesterday.

The disclosure was made by the Justice Department official who headed the burglaries investigation.

William Gardner — testifying at the trial of W. Mark Felt, former No. 2 man at the FBI, and Edward S. Miller, former head of the bureau's domestic intelligence — said the Justice Department reviewed cases involving Helms, but decided not to prosecute the former CIA chief. Gardner made the admission under cross-examination by Felt's attorney, Brian Gettings.

Gettings did not ask, and Gardner did not specify, the nature of the illegal entries.

Felt and Miller were indicted 29 months ago, along with former FBI Director L. Patrick Gray III, for approving the burglaries, or so-called "black bag" jobs, at the homes of relatives and friends of fugitive Weather Underground members. Gray was ordered tried separately, but recent prosecution admissions that the case against him is too weak have led to motions to dismiss the charge.

Gardner was called by prosecutors primarily to testify about secretly filed FBI documents concerning the burglaries.

Gardner told the jury of eight women and four men that he discovered documents relating to the break-ins in a locked safe of the secretary to an FBI official in the New York Squad 47 office, from which most of the burglaries were launched.

Gardner said he began his investigation in the summer of 1976 and discovered that the FBI had conducted secret, warrantless burglaries since 1942.

"In some cases," Gardner said, "the entries were approved by attorneys general."

Former Attorney General Ramsey Clark directed the bureau "to discontinue some of the bag jobs in the mid-1960s," Gardner said. "And the Justice Department halted nearly all domestic burglaries following a Supreme Court decision in 1972," the lawyer added.

That decision, Gardner said, drew a distinction between warrantless domestic entries, which the court declared unconstitutional, and those bag jobs concerning individuals acting as agents of foreign powers.

Burglaries aimed at the latter were presumed to be legal under the court ruling, Gardner said.

Under cross-examination by Gettings, Gardner repeatedly said he could not recall reviewing a series of documents referred to by the lawyer which allegedly demonstrated that the Weather Underground was "supported" by foreign governments.

At one point, when Gettings first tried to "refresh" Gardner's memory by showing him a top-secret document, the defense lawyer complained to Chief U.S. District Judge William B. Bryant that "this document is entirely excised."

"I want the document in its entirety so (Gardner) can see whether he remembers seeing it or not," Gettings said.

Bryant, who has chided Gettings on several occasions, interjected: "Now come on up here and let me tell you something," as he summoned the lawyers to the bench.

Following the bench conference, Gardner admitted that he was "generally aware" of the foreign links by some of the burglary victims.

He also conceded under cross examination that determining whether the burglary targets were "domestic" rather than foreign was a judgment call.

Gardner also agreed that the area of the law governing surreptitious entries "is unclear." "It is often difficult to determine whether a person has foreign connections or not," he said.

Later, while being questioned by chief prosecutor John W. Neilds Jr., Gardner identified a June 30, 1972 document from Miller to Felt stating that, "as to the investigation of foreign powers' involvement with the Weather Underground fugitives, there is none."

FBI fears Iranians using terror here

By Joe Trento

Staff writer

WASHINGTON, D.C. — The FBI is investigating two shootings that it fears may be the start of Iranian terrorist attacks against U.S. government officials.

Between Aug. 15 and 18, the quiet of two suburban Washington neighborhoods was shattered by gunfire directed at the empty houses of two top officials of the federal Bureau of Prisons.

The FBI and the Secret Service were called in by the Bureau of Prisons to investigate the assault against federal officials but the shootings weren't made public. Fairfax County police weren't informed until the investigation was well under way.

Sources close to the investigation told the Evening Journal they now believe the shootings could have been in retribution for government treatment of Iranian demonstrators.

About 200 Iranians were arrested during a demonstration in Washington on July 27. The U.S. Department of Justice yesterday said it is investigating whether District of Columbia police used excessive force and violated the demonstrators' civil rights.

The Evening Journal learned of the shootings from a former CIA employee who has close connections to Washington's large Iranian community. The incident was confirmed yesterday by Roger Young, a spokesman for FBI Director William Webster, and by Michael Aun, a spokesman for the Bureau of Prisons.

Anti-terrorist experts in the FBI's Washington Field Office and the Secret Service are investigating and both of the prison officials and their immediate families have been placed under 24-hour guard by the U.S. marshal's service.

While federal investigators would give no details beyond confirming that the attacks took place, the former CIA employee said one of the weapons was an M-16 rifle, an American-made weapon widely used during the Vietnam war.

The M-16 can be used for automatic and semi-automatic fire and numerous copies of the semi-automatic version are available. The FBI refuses any comment on the types of weapons used.

The attacks were on the homes of Norman A. Carlson, director of the Bureau of Prisons, at 8702 Piccadilly Place in Springfield, Va., and James A. Meko, the bureau's executive director, at 4500 Andes Court in Fairfax.

Police in Fairfax County, where both incidents took place, say they have been told of the incidents but the entire investigation is in federal hands. The exact date of the attacks isn't known because the men weren't home at the time.

Young refused to say who was under investigation in the shooting. Sources in the FBI and the intelligence units of several cooperating police agencies told the Evening Journal that the main target in the probe of Iranian-inspired violence is Gen. Hossein Fardoust, current head of SAVAMA, as the Iranian secret police and intelligence service are now called.

In a recent speech before retired intelligence officers, former CIA director Richard M. Helms called Fardoust's activities "one of the great mysteries." Fardoust was "a great friend of the shah" and "his most trusted adviser," Helms said.

FBI officials, including Young, confirmed that the bureau is searching for Fardoust, who was

reported to be in the United States to direct a series of large-scale demonstrations, including the July 27 demonstration which led to the mass arrests of Iranian demonstrators.

The demonstrators were freed on Aug. 5 in Otisville, N.Y. The attacks on the prison officials' homes occurred within the next two weeks.

Fardoust has been linked to the unsolved assassination of Ali Akbar Tabatabai, 49, who until his murder in Bethesda, Md., on July 22, headed an anti-Khomeini group of Iranians called the Iran Freedom Foundation.

Former CIA operative Donald E. Deneselya says Fardoust has been carrying out "his acts of terror to get back in the good graces of the Khomeini regime after documents obtained in the (American) embassy proved that he had been in contact with the CIA prior to the fall of the shah."

Deneselya insists that Fardoust has been conspiring with the CIA and that his terrorist activities in the United States are a direct result of a concerted plan to convince the Khomeini regime that the CIA will look the other way if attacks are made on followers of the shah.

Deneselya, who operates six taxicabs using Iranian drivers, has himself been the subject of at least two Washington area murder investigations involving Iranians.

It was Deneselya who first informed the News-Journal paper of the shooting incidents that FBI and Bureau of Prisons spokesmen say had been withheld from the press until yesterday.

Deneselya, 44, was in the news last spring when he threatened to release the names of hundreds of CIA covert operatives if federal prosecutors didn't withdraw drug charges against an Iranian friend of his, Shahrokh Bakhtiar. The government refused, Bakhtiar was convicted and sentenced to 15 years in prison and Deneselya attempted to release the names. This newspaper refused to print them.